

**STATE BOARD OF EQUALIZATION**  
**BEFORE THE ADMINISTRATIVE JUDGE**

IN RE:	Thomas F. & Shelia Moberg	)	
	Dist. 3, Map 126A, Group F, Control Map 126A,	)	
	Parcel 9.00, S.I. 000	)	
	Dist. 3, Map 126A, Group G, Control Map 126A,	)	Sumner County
	Parcel 9.00 & 16.00, S.I. 000	)	
	Dist. 3, Map 113P, Group G, Control Map 113P,	)	
	Parcel 16.00, S.I. 000	)	
	Residential Property	)	
	Tax Year 2006	)	

**INITIAL DECISION AND ORDER**

**Statement of the Case**

For the purpose of writing this initial decision and order these properties have been combined. The subject properties are presently valued as follows:

**Parcel 9.00, Group F**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$17,400	\$59,800	\$77,200	\$19,300

**Parcel 16.00, Group G(Map 126A)**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$17,400	\$64,600	\$82,000	\$20,500

**Parcel 9.00, Group G**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$17,400	\$63,800	\$81,200	\$20,300

**Parcel 16.00, Group G (Map 113P)**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$13,900	\$64,800	\$78,700	\$19,675

Appeals have been filed on behalf of the property owner with the State Board of Equalization on August 29, 2006.

These matters were reviewed by the undersigned administrative law judge pursuant to Tennessee Code Annotated (T.C.A.) §§ 67-5-1412, 67-5-1501 and 67-5-1505. This hearing was conducted on March 15, 2007, at the Division of Property Assessment's Office in Nashville. Present at the hearing Mr. Thomas Moberg, taxpayer and Mr. John Isbell, Sumner County Property Assessor.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Subject properties consist of single family residences located at 108 Walnut Crest, 135 Walnut Crest, 107 Walnut Crest and 102 Creekside Court; all in the same subdivision in Gallatin, Tennessee.

The initial issue is whether or not the State Board of Equalization has the jurisdiction to hear the taxpayer's appeals. The law in Tennessee generally requires a taxpayer to appeal an assessment to the County Board of Equalization prior to appealing the State Board of Equalization. T.C.A. §§ 67-5-1401 & 67-5-1412 (b). A direct appeal to the State Board of Equalization is only permitted if the assessor does not timely notify the taxpayer of a change of assessment prior to the meeting of the County Board. T.C.A. §§ 67-5-508(b)(2); 67-5-1412 (e). Nevertheless, the legislature has also provided that:

The taxpayer shall have a right to a hearing and determination to show **reasonable cause** for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the [state] board shall accept such appeal from the taxpayer up to March 1<sup>st</sup> of the year subsequent to the year in which the assessment is made (*emphasis added*).

In analyzing and reviewing Tenn. Code Ann. § 67-5-1412 (e), the Assessment Appeals Commission, in interpreting this section, has held that:

The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. It was not the intent of 'reasonable cause' provisions to waive these requirements except where the failure to meet them is **due to illness or other circumstances beyond the taxpayer's control**. (*emphasis added*), *Associated Pipeline Contractors Inc.*, (Williamson County Tax Year 1992, Assessment Appeals Commission, Aug. 11, 1994). See also *John Orovets*, (Cheatham County, Tax Year 1991, Assessment Appeals Commission, Dec. 3, 1993).

Thus for the State Board of Equalization to have jurisdiction in these appeals, the taxpayer must show that circumstances beyond his control prevented him from appealing to the Sumner County Board of Equalization. It is the taxpayer's burden to prove that they are entitled to the requested relief. The 'report' from the County Board shows that the taxpayer appealed 4 properties, however, only 2 of those 4 were actually appealed to the State Board.<sup>1</sup>

The taxpayer, Mr. Moberg, testified that when he made his appointment to speak with the County Board, he gave them all the parcel id numbers and when he actually got to the Board, they discussed all the parcels. Mr. Moberg stated that while he owns several pieces of property, he believes that the values of those in this particular subdivision are a little off. He also stated that it would not have made sense for him to appeal one or two and not appeal all of them. Mr. Isabel was able to produce a copy of the *Sumner County Board of Equalization Application* as an exhibit; it clearly shows that Mr. Moberg put all the

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<sup>1</sup> Mr. Moberg filed out four appeal forms and had checked in response to question number 10 on the State application that he had gone before the Sumner County Board, he then attached a copy of the printout 'report' to each appeal form, which is the normal procedure. Unfortunately, not until it was time for this hearing did anyone match up the numbers on both the County Board report and the appeal forms to discover the discrepancies.

parcel numbers down on the application. What is unclear is why the county only reported out two of the four under appeal in these proceedings. Clearly the taxpayer did everything in his power to comply with the statute. This is not the first time that the issue of documentation from a County Board has been an issue in a jurisdictional hearing. It is beyond me why the County Boards will not send written confirmation to a taxpayer once he or she has made an appointment to discuss their properties. That way if there is a problem as to how many parcels or which parcels are to be discussed it can be discovered and addressed quickly.

After reviewing the documentation, there is sufficient *reasonable cause* to maintain that incidents beyond the taxpayers control led to the jurisdictional issue here. The administrative judge is of the opinion that the State Board of Equalization does have jurisdiction in these cases.

Now as to the issue of valuation, the taxpayer contends that all the properties are alike in nature, that they have the same basic foundation and construction and should therefore be valued the same. They sit on the same type of lot and the only minuscule difference is that at 102 Creekside there is a slight roof elevation. Mr. Moberg believes that his properties are worth between \$66,000 and \$70,000 each.

The assessor contends that the properties are properly valued and should remain at the same value as previously established.

The germane issue is the value of the property as of January 1, 2006. The basis of valuation as stated in Tenn. Code Ann. § 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . . ."

After having reviewed all the evidence in this case, the administrative judge finds that the subject property should be valued at their previously assessed values based upon the presumption of correctness attaching to the decision of the Sumner County Board of Equalization.

Since the taxpayer is appealing from the determination of the Sumner County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981).

Mr. Moberg did not produce any paired data analysis to support his contention of the values of the properties. He did produce photographs of the properties which show that with the exception of the 102 Creekside Court property they all look alike. He did not

show competent evidence that the fair market value of the subject properties established by the county's assessment values are incorrect.

In a decision from April 10, 1984, from the State Board of Equalization in *Laurel Hills Apartments, et. al.* (Davidson County, Tax Years 1981 and 1982) holds that "as a matter of law property in Tennessee is required to be valued and equalized according to the "Market Value Theory'."

As stated by the Board, the Market Value Theory requires that property "be appraised annually at full market value and **equalized by application of the appropriate appraisal ratio . . .**" *Id.* at 1 (emphasis added).

The Assessment Appeals Commission further elaborated upon the concept of equalization in *Franklin D. & Mildred J. Herndon* (Montgomery County, Tax Years 1989 and 1990) (June 24, 1991), when it rejected the taxpayer's equalization argument reasoning in pertinent part as follows:

In contending the entire property should be appraised at no more than \$60,000 for 1989 and 1990, the taxpayer is attempting to compare his appraisal with others. There are two flaws in this approach. First, while the taxpayer is certainly entitled to be appraised at no greater percentage of value than other taxpayers in Montgomery County on the basis of equalization, the assessor's proof establishes that this property is not appraised at any higher percentage of value than the level prevailing in Montgomery County for 1989 and 1990. That the taxpayer can find other properties which are more under appraised than average **does not entitle him to similar treatment.** Secondly, as was the case before the administrative judge, the taxpayer has produced an impressive number of "comparables" but has not **adequately indicated how the properties compare to his own in all relevant respects.** . . . (emphasis added) Final Decision and Order at 2.

See also *Earl and Edith LaFollette*, (Sevier County, Tax Years 1989 and 1990) (June 26, 1991), wherein the Commission rejected the taxpayer's equalization argument reasoning that "[t]he evidence of other tax-appraised values might be relevant if it indicated that properties throughout the county were under appraised . . ." Final Decision and Order at 3.

With respect to the issue of market value, the administrative judge finds that Mr. Moberg simply introduced insufficient evidence to affirmatively establish the market value of the subject properties as of January 1, 2006, the relevant assessment date pursuant to Tenn. Code Ann. § 67-5-504(a).

In order to analyze the assertions of the taxpayer, the administrative judge must also look to the applicable and acceptable standards in the industry. The correct methodology would be for the taxpayer to compare the sales of similar properties, adjusted

to show that differences are not ignored but taken into account to support an argument that the values should be changed because they are too high as established by the county.

The administrative judge finds that the procedure normally utilized in the sales comparison approach has been summarized in one authoritative text as follows:

To apply the sales comparison approach, an appraiser follows a systematic procedure.

1. Research the competitive market for information on sales transactions, listings, and offers to purchase or sell involving properties that are similar to the subject property in terms of characteristics such as property type, date of sale, size, physical condition, location, and land use constraints. The goal is to find a set of comparable sales as similar as possible to the subject property.
2. Verify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm's-length, market considerations. Verification may elicit additional information about the market.
3. Select relevant units of comparison (e.g., price per acre, price per square foot, price per front foot) and develop a comparative analysis for each unit. The goal here is to define and identify a unit of comparison that explains market behavior.
4. Look for differences between the comparable sale properties and the subject property using the elements of comparison. Then **adjust the price of each sale property to reflect how it differs from the subject property or eliminate that property as a comparable**. This step typically involves using the most comparable sale properties and then adjusting for any remaining differences.

**Reconcile the various value indications produced from the analysis of comparables into a single value indication or a range of values.** [Emphasis supplied] Appraisal Institute, *The Appraisal of Real Estate* at 422 (12<sup>th</sup> ed. 2001). Andrew B. & Majorie S. Kjellin, (Shelby County, 2005)

Acceptable appraisal techniques to establish the value of the property by the appraisal date is the procedure which must be used not just discussing general similarities and differences in neighborhood properties. The Taxpayer failed to meet his burden in the cause.

#### ORDER

It is therefore ORDERED that the following values and assessments be adopted for tax year 2006:

##### Parcel 9.00, Group F

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$17,400	\$59,800	\$77,200	\$19,300

##### Parcel 16.00, Group G(Map 126A)

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
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**Parcel 16.00, Group G (Map 113P)**

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$13,900	\$64,800	\$78,700	\$19,675

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

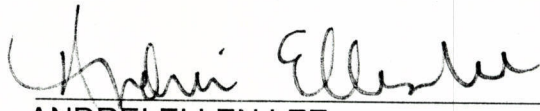
1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or

3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 29<sup>th</sup> day of March, 2007.

  
ANDREI ELLEN LEE  
ADMINISTRATIVE JUDGE  
TENNESSEE DEPARTMENT OF STATE  
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Thomas Moberg  
John Isbell, Property Assessor